



Federal Communications Commission  
Washington, D.C. 20554

October 21, 2014

DA 14-1521

## **Small Entity Compliance Guide**

### **FCC To Collect Data from Providers and Purchasers Of Special Access Services and Certain Entities Providing “Best Efforts” Services in Price Cap Areas**

FCC 12-153; DA 14-1327; WC Docket No. 05-25, RM-10593

#### **DATA COLLECTION RESPONSES ARE DUE BY DECEMBER 15, 2014**

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—to comply with the new rule/s adopted in the above-referenced FCC rulemaking docket/s. This Guide is not intended to replace the rule/s and, therefore, final authority rests solely with the rule/s. Although we have attempted to cover all parts of the rule/s that might be especially important to small entities, the coverage may not be exhaustive. As a result, in any civil or administrative action against a small entity for a violation of a rule or rules, the content of the Small Entity Compliance Guide may be considered only as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties and damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC’s approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC’s Consumer Center:

1-888-CALL-FCC (1-888-225-5322)  
TTY: 1-888-TELL-FCC (1-888-835-5322)  
Fax: 202-418-0232

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**SMALL ENTITY COMPLIANCE GUIDE**  
**Special Access Data Collection**

WC Docket No. 05-25  
RM-10593

**I. INTRODUCTION**

➤ **What is special access service?**

Special access is the non-switched transport of voice and data over a dedicated transmission line between two or more designated points. For example, wireless providers use high capacity special access lines to send voice and data from cell towers to their mobile switching center where the call is then switched to the sender's intended recipient. Individual consumers, small businesses, government offices, hospitals, medical offices, schools, libraries, ATMs and credit card readers use special access to either connect to a dedicated network or to an Internet service provider for the completion of the transmission via the Internet.

**II. OBJECTIVES OF THE PROCEEDING**

The FCC is reviewing its special access regulations for the larger traditional phone companies—the “price cap” incumbent local exchange carriers (ILECs) such as AT&T, Verizon, Qwest, etc.—to determine whether the FCC's special access rules are working to ensure just and reasonable rates, terms, and conditions for special access service and promote competition and investment in the special access market.

On December 11, 2012, the FCC adopted a Report and Order and Further Notice of Proposed Rulemaking requiring providers and purchasers of special access and certain entities providing best efforts business broadband Internet access service to submit data and information. The order included an “initial version” of the data collection questions. On September 18, 2013, the FCC's Wireline Competition Bureau (Bureau) released an order clarifying the scope of the collection, providing instructions on how to respond to the data collection questions, and providing a list of all modifications and amendments to the data collection questions and definitions based on feedback received from industry. The FCC then submitted the collection to the Office of Management and Budget (OMB) for approval (OMB Control No. 3060-1197) pursuant to the Paperwork Reduction Act (PRA). OMB approved the collection on August 15, 2014, subject to changes. On September 15, 2014, the Bureau released an Order on Reconsideration amending the collection to reflect the approval received from OMB and announcing a December 15, 2014, deadline by which parties are required to submit data and information.

The FCC will collect information on the full array of special access services, including Circuit-Based Dedicated Services such as DS1s and DS3s, and Packet-

Based Dedicated Services such as Ethernet. (Certain capitalized terms are defined in section VI, below.) Larger entities that provide Best Efforts Business Broadband Internet Access Services are also required to provide information to help the FCC assess whether such services, not including mobile wireless services, are a competitive substitute for special access services.

Once the data is collected, parties will have the opportunity to submit comments on whether any changes to the FCC's special access rules are needed. Comments are currently due by April 6, 2015; reply comments are due by May 18, 2015.

### **III. COMPLIANCE REQUIREMENTS**

#### **➤ Who must respond to the data collection?**

- All Providers and Purchasers of special access services in areas where the incumbent local exchange carrier (ILEC) is subject to price cap regulation must respond to this data collection unless specifically excluded (*see* discussion below on those Purchasers that are specifically excluded).
- Providers that must respond include, but are not limited to, ILECs, competitive local exchange carriers (CLECs), interexchange carriers, cable system operators, fixed wireless service providers (including wireless Internet service providers (WISPs)), terrestrial and satellite mobile wireless service providers, electric utilities, local government entities, certain providers of information services and third party network providers.
- Purchasers that must respond include, but are not limited to, ILECs, CLECs, interexchange carriers, cable system operators, wireless providers, satellite service providers, international service providers to and from points in the United States, interconnected and non-interconnected voice over Internet protocol (VoIP) providers, certain information service providers such as Internet access providers, and entities that hold certain private wireless licenses. A Purchaser does not include an entity that purchased less than \$5 million in Dedicated Services in 2013 (in areas where the ILEC is subject to price cap regulation).
- In addition to Providers and Purchasers, entities that provide Best Efforts Business Broadband Internet Access Services in an area where the ILEC is subject to price cap regulation are also required to respond to this data collection unless they have fewer than 15,000 customers and fewer than 1,500 business broadband customers as of December 18, 2012.

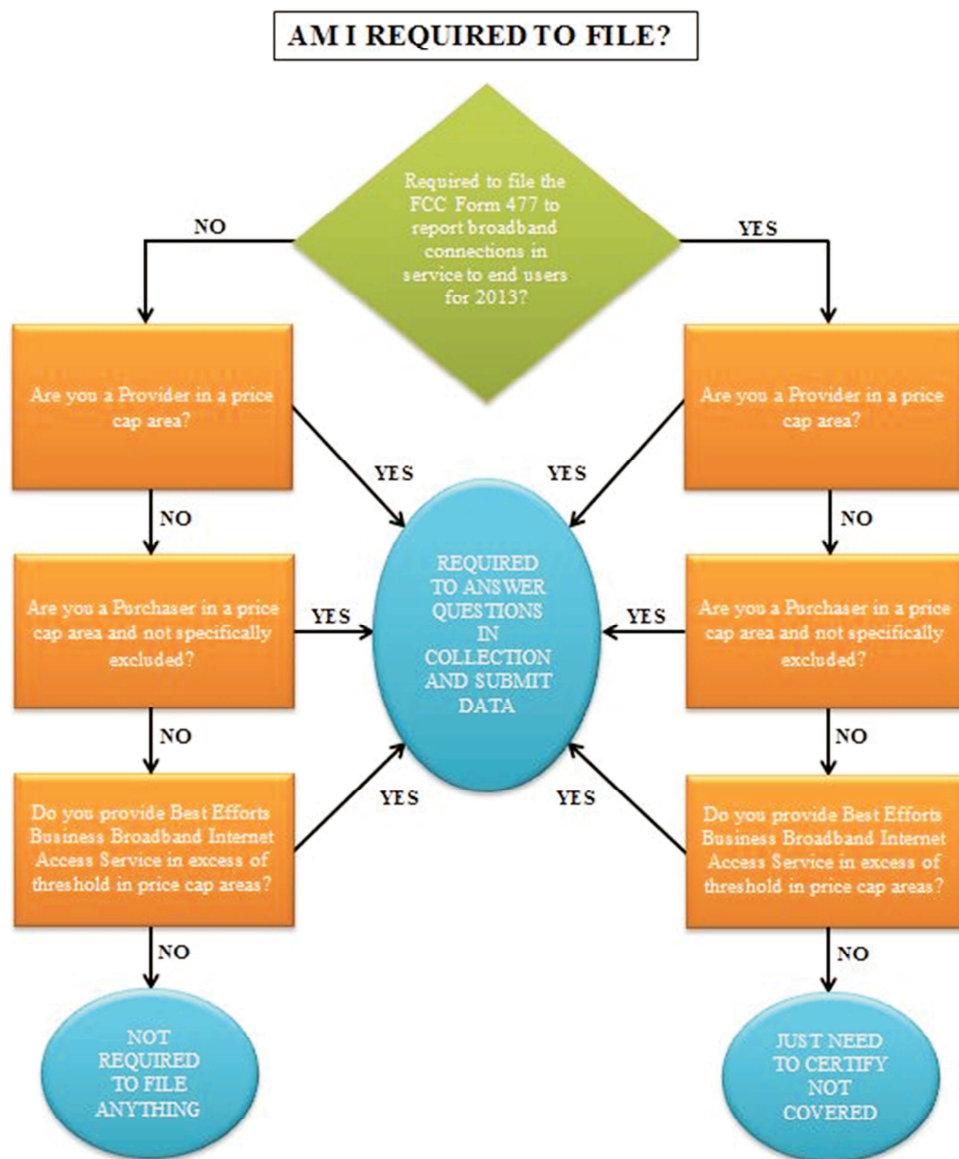
- To help you determine whether you provide or purchase special access services in a price cap area, there is a map available on the FCC's website depicting the study areas where ILEC's are subject to price cap regulation: <http://www.fcc.gov/maps/regulatory-type-holding-company-level-study-area>.

➤ **Who is excluded from responding to the data collection questions?**

- Purchasers specifically excluded from the data collection are as follows: Only entities falling into one or more of the categories listed below are specifically excluded from the collection even if they purchase Dedicated Service in a price cap area.
  - End Users that provide an information service;
  - Equipment authorization holders regulated under Parts 2 and 15 of the Commission's rules;
  - Accounting authorization holders in the maritime and maritime mobile-satellite radio services regulated under Part 3 of the Commission's rules;
  - Experimental radio authorization holders regulated under Part 5 of the Commission's rules;
  - Commercial radio operators regulated under Part 13 of the Commission's rules;
  - Antenna structure registration holders regulated under Part 17 of the Commission's rules;
  - Television and radio broadcasters regulated under Part 73 of the Commission's rules;
  - Holders of authorizations issued pursuant to Part 74 of the Commission's rules such as experimental radio, auxiliary, special broadcast and other program distribution service authorizations;
  - Maritime service authorization holders regulated under Part 80 of the Commission's rules;
  - Aviation service authorization holders regulated under Part 87 of the Commission's rules;
  - Private land mobile radio service authorization holders regulated under Part 90 of the Commission's rules except for holders of authorizations under Part 90 for the provision of point-to-point fixed microwave services and authorizations in the Wireless Broadband Services frequency band, 3650-3700 MHz;
  - Personal radio service authorization holders regulated under Part 95 of the Commission's rules; and

- Amateur radio service authorization holders regulated under Part 97 of the Commission's rules.
  - The above exclusions do not exclude entities from responding to those questions applicable to Providers of a Dedicated Service or entities that provide a Best Efforts Business Broadband Internet Access Service in a price cap area. In addition, these exclusions only apply to the categorically excluded entity and do not extend to other entities within the same corporate structure or entities that are otherwise affiliated with the excluded entity. For example, if an entity holding a television broadcast authorization is affiliated with a cable company that provides Dedicated Service, the affiliated cable company must still respond to the data collection even though the television broadcasting entity is not required to respond. In addition, for clarity, we point out that these categorical exclusions do not include common carriers (wired or wireless), mobile wireless service providers, cable system operators even if they only provide video program services, international service providers, satellite service providers, or entities that hold FCC authorizations for the provision of fixed point-to-point microwave services.
  - Entities that provide Best Efforts Business Broadband Internet Access Services in an area where the ILEC is subject to price cap regulation are not required to respond to those questions in the collection directed at such entities if they have fewer than 15,000 customers and fewer than 1,500 business broadband customers as of December 18, 2012.
- **Even if specifically excluded you may have a limited obligation to submit a certification.**
- Entities that were required to report broadband connections in service to end users on the FCC Form 477 ("Local Telephone Competition and Broadband Reporting") for 2013 but that are not a Provider, Purchaser, or an excluded Best Efforts Business Broadband Internet Access Services provider in a price cap area will still need to file a certification with the FCC saying as much.

- Decision Tree to help you assess whether or not you are required to file anything.



➤ **Only certain questions apply to certain types of filers.**

- Those required to respond to the collection questions only have to respond to the questions that apply to the category of services that they provide or purchase and that are not otherwise designated as “(optional).” Further details are contained in the data collection instructions, which are available on the FCC’s website, *see* FCC, Special Access Data Collection Overview, <http://www.fcc.gov/encyclopedia/special-access-data-collection-overview-0>.
- Below is a list of the questions directed at various categories of respondents:

<b>Type of Filer</b>	<b>Mandatory Questions</b>	<b>Voluntary Questions</b>
Competitive Providers (e.g., CLECs, interexchange carriers, cable operators and wireless providers)	Questions II.A.1-3, II.A.4(a)-(b), II.A.4(d)- (k), II.A.5-10, II.A.11 (part 1), II.A.12-19; Questions D.1-2	Questions II.A.4(c), II.A.11 (part 2), and II.A.16 subparts (a)-(e)
ILECs	Questions II.B.1-2, II.B.3(a)-(b), II.B.3(d)-(j), II.B.4-9, II.B.10-13; Questions D.1-2	Questions II.B.3(c) and II.B.9 subparts (a)-(e)
Best Efforts Business Broadband Internet Access Service Providers to 15,000 or more customers or 1,500 or more business broadband customers in price cap areas as of December 18, 2012	Question II.C.1; Questions D.1-2	
All Providers	Questions D.1-2	
Purchasers that are Mobile Wireless Service Providers	Questions II.E.1, II.E.2(a)-(c), II.E.2(e)-(j), II.E.3, II.E.12, II.E.15	Questions II.E.2(d), II.E.4-11 and II.E.13-14
Purchasers that are not Mobile Wireless Service Providers	Questions II.F.1-2, II.F.11, II.F.14	Questions II.F.3-10, II.F.12-13
FCC Form 477 filers that are not Providers, Purchasers or entities that provide Best Efforts Business Broadband Internet Access Service to 15,000 or more customers	Question II.G.1	



Type of Filer	Mandatory Questions	Voluntary Questions
or 1,500 or more business broadband customers in price cap areas as of December 18, 2012		

- **Penalties for non-response.** Failure to comply with the data reporting requirement may subject entities to monetary forfeitures of up to \$160,000 for each violation or each day of a continuing violation, up to a maximum of \$1,575,000 for any single act or failure to act that is a continuing violation.

#### IV. RESPONDING TO THE DATA COLLECTION

- On October 1, 2014, the FCC launched a website portal for the electronic submission of responses to the data collection questions and certifications. The website portal is available at <https://specialaccessfiling.fcc.gov/spadc/login>. The website portal contains a system guide that provides filers with additional information on how to navigate the submission process.
- The data collection seeks information on facilities, billing, revenue, and expenditures considered confidential by businesses. The Bureau has released a protective order outlining the procedures for designating and accessing information deemed confidential and highly confidential. The protective order allows only limited outside access to confidential and highly confidential information filed with the FCC. You can find a copy of the protective order on the FCC's website, *see* FCC, Special Access Data Collection Overview, <http://www.fcc.gov/encyclopedia/special-access-data-collection-overview-0>.

#### V. COMPLIANCE DATES

- Parties are required to respond to the data collection by December 15, 2014.

#### VI. IMPORTANT DEFINITIONS

- Below is a list of defined terms used in this Small Entity Compliance Guide. For additional terms as used in the data collection, please refer to the Definitions section of the data collection questions; a copy of which can be found on the FCC's website, *see* FCC, Special Access Data Collection Overview, <http://www.fcc.gov/encyclopedia/special-access-data-collection-overview-0>.
  - "Best Efforts Business Broadband Internet Access Service" means a "best efforts" Internet access data service with an advertised bandwidth connection of at least 1.5 Mbps upstream and downstream that is marketed to enterprise

or business customers such as DSL and cable modem broadband access but excluding mobile wireless services.

- “Competitive Provider” means a CLEC, interexchange carrier, cable operator, wireless provider or any other entity that is subject to the FCC’s jurisdiction under the Communications Act and either provides a Dedicated Service or provides a Connection over which a Dedicated Service could be provided. A Competitive Provider does not include an ILEC operating within its incumbent service territory.
- “Connection” means a wired “line” or wireless “channel” that provides a dedicated communication path between an End User’s Location and the first Node on a Provider’s network. Multiple dedicated communication paths serving one or more end users at the same Location should be counted as a single Connection. A Connection may be an unbundled network element (UNE), including an unbundled copper loop. A Connection must have the capability of being used to provide one or more Dedicated Services; however, a Connection can be used to provide other services as well. For example, a dedicated communication path that is currently being used to provide a mass market broadband service but has the capability to provide a Dedicated Service is considered a Connection for the purpose of this data collection.
- “Dedicated Service” transports data between two or more designated points, *e.g.*, between an End User’s premises and a point-of-presence, between the central office of a local exchange carrier (LEC) and a point-of-presence, or between two end user premises, at a rate of at least 1.5 Mbps with prescribed performance requirements that include bandwidth-, latency-, or error-rate guarantees or other parameters that define delivery under a Tariff or in a service-level agreement. Dedicated Service includes, but is not limited to, circuit-based Dedicated Service (CBDS) and packet-based Dedicated Service (PBDS). For the purpose of this data collection, Dedicated Service does not include Best Efforts Business Broadband Internet Access Service.
- “End User” means a business, institutional, or government entity that purchases a communications service for its own purposes and does not resell such services, including mobile wireless service providers that purchase communications services to make connections within its own network such as backhaul to a cell site.
- “Incumbent Local Exchange Carrier (ILEC)” means, for the purpose of this data collection, a LEC that provides a Dedicated Service in study areas where it is subject to price cap regulation under sections 61.41-61.49 of the FCC’s rules, 47 C.F.R. §§ 61.41-61.49.

- “Location” means a building, other man-made structure, a cell site on a building, a free-standing cell site, or a cell site on some other man-made structure where the End User is connected.
- “Node” means an aggregation point, branch point, or a point of interconnection on a Provider’s network including a point of interconnection to other Provider networks.
- “Provider” means both ILECs and Competitive Providers.
- “Purchaser” means Competitive Providers and End Users that are subject to the Commission’s jurisdiction under the Communications Act and that purchased Dedicated Services of \$5 million or more in 2013 in areas where the ILEC is subject to price cap regulation.

## VII. WEBLINKS

FCC, Special Access Data Collection Overview, <https://specialaccess.fcc.gov/spadc/login> (webpage will soon go live).

## IX. CITATIONS

*Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order on Reconsideration, DA 14-1327 (Wireline Comp. Bur. rel. Sept. 15, 2014) (order amending and finalizing data collection to reflect the approval received from OMB pursuant to the PRA and announcing that responses to the data collection are due by December 15, 2014).

*Commission Moves Forward with Special Access Data Collection*, WC Docket No. 05-25, RM-10593, Public Notice, DA 14-1201 (Wireline Comp. Bur. rel. Aug. 18, 2014) (public notice announcing OMB approval of data collection subject to certain changes).

*Comprehensive Market Data Collection for Interstate Special Access Services, FCC 12-153, Notice of Office of Management and Budget Action*, OMB Control No. 3060-1197 (Aug. 15, 2014), available at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201311-3060-001#](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201311-3060-001#) (OMB action approving the data collection subject to certain changes).

*Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB)*, 78 Fed. Reg. 73,861 (rel. Dec. 9, 2013) (Federal

Register notice announcing that data collection submitted to OMB for approval pursuant to PRA).

*Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order, 28 FCC Rcd 13189 (Wireline Comp. Bur. 2013) (order clarifying the scope of the data collection, providing instructions for submitting information, and modifying and amending questions and definitions contained in the data collection).

*Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 78 Fed. Reg. 2,572 (rel. Jan. 11, 2013) (Federal Register publication of *Data Collection Order*).

*Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (*Data Collection Order*) (order outlining the data collection requiring providers and purchasers of special access and certain entities providing “best efforts” service to submit data, information and documents for a comprehensive evaluation of competition in the special access market).

*Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order, 27 FCC Rcd 10557 (2012) (order suspending the FCC’s special access pricing flexibility rules in areas subject to price cap regulation on an interim basis).